

As Amended by House Committee

As Amended by Senate Committee

Session of 2023

SENATE BILL No. 205

By Committee on Agriculture and Natural Resources

2-8

1 AN ACT concerning water; relating to water rights; authorizing certain
2 water rights in a water bank to participate in multi-year flex accounts
3 on a temporary basis; amending ~~K.S.A. 82a-764~~ and ~~K.S.A. 2022~~
4 **Supp. 82a-736** and repealing the existing section ~~sections~~ section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) Notwithstanding any prohibition or restriction on
8 the establishment of multi-year flex accounts due to participation of a base
9 water right in a water bank established pursuant to the Kansas water
10 banking act, K.S.A. 82a-761 et seq., and amendments thereto, the chief
11 engineer shall approve a complete application for the establishment of a
12 multi-year flex account pursuant to K.S.A. 82a-736, and amendments
13 thereto, that was submitted to the chief engineer on or before December
14 31, 2022, if such right otherwise meets the requirements of K.S.A. 82a-
15 736, and amendments thereto, and could have been approved if not for the
16 relevant base water right's participation in a water bank.

17 (b) This section shall expire on December 31, 2023.

18 New Sec. 2. (a) For purposes of K.S.A. 82a-736 **and 82a-764**, and
19 amendments thereto, a water right or any portion of a water right that has
20 been deposited, enrolled or placed in a safe deposit account associated
21 with a water bank established pursuant to the Kansas water banking act,
22 K.S.A. 82a-761 et seq., and amendments thereto, shall not be eligible to be
23 enrolled in a multi-year flex account that begins during a calendar year in
24 which water from such water right or portion of a water right was
25 withdrawn from a safe deposit account. Water from a water right that has
26 been deposited, enrolled or placed in a safe deposit account associated
27 with a water bank established pursuant to the Kansas water banking act,
28 K.S.A. 82a-761 et seq., and amendments thereto, shall not be withdrawn
29 from a safe deposit account while such water right is enrolled in a multi-
30 year flex account.

31 (b) A water right shall be considered enrolled in a multi-year flex
32 account until the end of the calendar year in which the multi-year flex
33 account permit expires, even if the allocation under the multi-year flex
34 account is exhausted prior to the expiration of the multi-year flex account

1 permit.

2 ~~Sec. 3. K.S.A. 82a-764 is hereby amended to read as follows: 82a-~~
3 ~~764. Before a water right or portion of a water right shall be accepted for~~
4 ~~deposit in a water bank or water from a water right shall be placed in a~~
5 ~~safe deposit account, the bank, with the assistance of the division, shall~~
6 ~~determine whether the water right is bankable, as follows: .A water right~~
7 ~~is bankable if the right:~~

8 ~~(a) The right is vested or has been issued a certificate of~~
9 ~~appropriation; and~~

10 ~~(b) the right has not been abandoned and is in good standing, based~~
11 ~~on past water usage and compliance with the terms of the holder's permit~~
12 ~~and all applicable provisions of law and orders of the chief engineer; and~~

13 ~~(c) is not currently enrolled in an active multi-year flex account~~
14 ~~pursuant to K.S.A. 82a-736, and amendments thereto. If the allocation~~
15 ~~under the multi-year flex account is exhausted prior to the end of a~~
16 ~~calendar year, the water right shall be considered enrolled in a multi-year~~
17 ~~flex account until the end of the calendar year in which the multi-year flex~~
18 ~~account permit expires.~~

19 *{Sec. 4. 3. K.S.A. 2022 Supp. 82a-736 is hereby amended to read as*
20 *follows: 82a-736. (a) It is hereby recognized that an opportunity exists to*
21 *improve water management by enabling multi-year flexibility in the use*
22 *of water authorized to be diverted under a groundwater water right,*
23 *provided that such flexibility neither impairs existing water rights, nor*
24 *increases the total amount of water diverted, so that such flexibility has*
25 *no long-term negative effect on the source of supply. It is therefore*
26 *declared necessary and advisable to permit the establishment of multi-*
27 *year flex accounts for groundwater water rights, together with*
28 *commensurate protections for existing water rights and their source of*
29 *supply.*

30 *(b) As used in this section:*

31 *(1) "Alternative base average usage" means an allocation based on*
32 *net irrigation requirements calculated pursuant to subsection (c)(1)(D)*
33 *(ii) that may be used in place of the base average usage.*

34 *(2) "Base water right" means a water right under which an*
35 *applicant applies to the chief engineer to establish a multi-year flex*
36 *account and where all of the following conditions exist:*

37 *(A) The authorized source of supply is groundwater; and*

38 *(B) the water right is not currently the subject of a multi-year*
39 *allocation due to a change approval that allows an expansion of the*
40 *authorized place of use.*

41 *(3) "Multi-year flex account" means a term permit that suspends a*
42 *base water right during its term, except when the term permit may be no*
43 *longer exercised because of an order of the chief engineer, and is subject*

1 *to the terms and conditions as provided in subsection (e).*

2 *(4) "Base average usage" means:*

3 *(A) The average amount of water actually diverted for the*
4 *authorized beneficial use under the base water right during calendar*
5 *years 2000 through 2009, excluding:*

6 *(i) Any amount diverted in any such year that exceeded the amount*
7 *authorized by the base water right;*

8 *(ii) any amount applied to an unauthorized place of use; and*

9 *(iii) diversions in calendar years when water was diverted under a*
10 *multi-year allocation with an expansion of the authorized place of use*
11 *due to a change approval;*

12 *(B) if water use records are inadequate to accurately determine*
13 *actual water use or upon demonstration of good cause by the applicant,*
14 *the chief engineer may calculate the base average usage with less than*
15 *all 10 calendar years during 2000 and 2009. In no case shall the base*
16 *average usage be calculated with less than five calendar years during*
17 *2000 and 2009; or*

18 *(C) if the holder of the base water right shows to the satisfaction of*
19 *the chief engineer that water conservation reduced water use under the*
20 *base water right during calendar years 2000 through 2009, then the base*
21 *average usage shall be calculated with the five calendar years*
22 *immediately before the calendar year when water conservation began.*

23 *(5) "Chief engineer" means the chief engineer of the division of*
24 *water resources of the department of agriculture.*

25 *(6) "Flex account acreage" means the maximum number of acres*
26 *lawfully irrigated during a calendar year, except for any acres irrigated*
27 *under a multi-year allocation that allowed for an expansion of the*
28 *authorized place of use due to a change approval and any of the*
29 *following conditions are met:*

30 *(A) The calendar year is 2000 through 2009;*

31 *(B) if water conservation reduced water use under the base water*
32 *right during calendar years 2000 through 2009, the calendar year is a*
33 *year within the five calendar years immediately prior to the calendar*
34 *year when water conservation began; or*

35 *(C) if an application to appropriate water was approved after*
36 *December 31, 2004, the calendar year is any during the perfection*
37 *period.*

38 *(7) "Net irrigation requirement" means the net irrigation*
39 *requirement for 50% chance rainfall of the county that corresponds with*
40 *the location of the authorized place of use of the base water right as*
41 *provided in K.A.R. 5-5-12, on the effective date of this act.*

42 *(c) (1) Except as provided in sections 1 and 2, and amendments*
43 *thereto, any holder of a base water right that has not been deposited or*

1 *placed in a safe deposit account in a chartered water bank may establish*
2 *a multi-year flex account where the holder may deposit, in advance, the*
3 *authorized quantity of water from such water right for any five*
4 *consecutive calendar years, except when the chief engineer determines a*
5 *shorter period is necessary for compliance with a local enhanced*
6 *management area or an intensive groundwater use control area and the*
7 *corrective controls in the area do not prohibit the use of multi-year flex*
8 *accounts, and subject to all of the following:*

9 *(A) The water right must be vested or shall have been issued a*
10 *certificate of appropriation;*

11 *(B) the withdrawal of water pursuant to the water right shall be*
12 *properly and adequately metered;*

13 *(C) the water right is not deemed abandoned and is in compliance*
14 *with the terms and conditions of its certificate of appropriation, all*
15 *applicable provisions of law and orders of the chief engineer;*

16 *(D) the amount of water deposited in the multi-year flex account*
17 *shall not exceed the greatest of the following:*

18 *(i) 500% of the base average usage;*

19 *(ii) 500% of the product of the annual net irrigation requirement*
20 *multiplied by the flex account acreage, multiplied by 110%, but not*
21 *greater than five times the maximum annual quantity authorized by the*
22 *base water right;*

23 *(iii) if the authorized place of use is located wholly within the*
24 *boundaries of a groundwater management district, an amount that shall*
25 *not increase the long-term average use of the groundwater right as*
26 *specified by rule or regulation promulgated pursuant to K.S.A. 82a-*
27 *1028(o), and amendments thereto; or*

28 *(iv) pursuant to subparagraph (F), the amount computed in (i), (ii)*
29 *or (iii) plus any deposited water remaining in a multi-year flex account*
30 *up to 100% of the base average usage or alternative base average usage;*

31 *(E) if the multi-year flex account is approved for less than five*
32 *calendar years, the amount of water deposited in the multi-year flex*
33 *account shall be prorated based on the number of calendar years*
34 *approved and otherwise calculated as required by subsection (c)(1)(D)*
35 *(i), (ii) or (iii); and*

36 *(F) any deposited water remaining in a multi-year flex account up*
37 *to 100% of the base average usage or alternative base average usage*
38 *may be added to the deposit amount calculated in subparagraph (D) if*
39 *the base water right is enrolled in another multi-year flex account*
40 *during the calendar year in which the existing multi-year flex account*
41 *expires. The total amount of water deposited in any multi-year flex*
42 *account shall not exceed 500% of the authorized quantity of the base*
43 *water right.*

1 (2) *The provisions of K.A.R. 5-5-11 are limited to changes in*
2 *annual authorized quantity and shall not apply to this subsection.*

3 (d) *The chief engineer shall implement a program providing for the*
4 *issuance of term permits to holders of groundwater water rights who*
5 *have established flex accounts in accordance with this section. Such*
6 *term permits shall authorize the use of water in a flex account at any*
7 *time during the consecutive calendar years for which the application for*
8 *the term permit authorizing a multi-year flex account is made, without*
9 *annual limits on such use.*

10 (e) *Term permits provided for by this section shall be subject to the*
11 *following:*

12 (1) *A separate term permit shall be required for each point of*
13 *diversion authorized by the base water right.*

14 (2) *The quantity of water authorized for diversion shall be limited*
15 *to the amount deposited pursuant to subsection (c)(1)(D).*

16 (3) *The rate of diversion for each point of diversion authorized*
17 *under the term permit shall not exceed the rate of diversion for each*
18 *point of diversion authorized under the base water right.*

19 (4) *The authorized place of use shall be the place of use or a*
20 *subdivision of the place of use for the base water right. Any approval of*
21 *an application to change the place of use of the base water right shall*
22 *automatically result in a change to the place of use for the term permit.*

23 (5) *The point of diversion authorized by the term permit shall be*
24 *specified by referencing one point of diversion authorized by the base*
25 *water right at the time the multi-year flex account term permit*
26 *application is filed with the chief engineer or at the time any approvals*
27 *changing such referenced point of diversion of the base water right are*
28 *approved during the multi-year flex account period. For a base water*
29 *right with multiple points of diversion, each point of diversion*
30 *authorized by a term permit shall receive a specific assignment of a*
31 *maximum authorized quantity of water, assigned proportionately to the*
32 *authorized annual quantities of the respective points of diversion under*
33 *the base water right.*

34 (6) *The chief engineer may establish, by rules and regulations,*
35 *criteria for such term permits.*

36 (7) *Except as explicitly provided for by this section, such term*
37 *permits shall be subject to all provisions of the Kansas water*
38 *appropriation act, and rules and regulations adopted under such act,*
39 *and nothing in this section shall authorize impairment of any vested*
40 *right or prior appropriation right by the exercise of such term permit.*

41 (f) *An application for a multi-year flex account shall be filed with*
42 *the chief engineer on or before December 31 of the first year of the*
43 *multi-year flex account term for which the application is being made.*

1 (g) *All costs of administration of this section shall be paid from fees*
2 *for term permits provided for by this section. Any appropriation or*
3 *transfer from any fund other than the water appropriation certification*
4 *fund for the purpose of paying such costs shall be repaid to the fund*
5 *from where such appropriation or transfer is made. At the time of*
6 *repayment, the secretary of agriculture shall certify to the director of*
7 *accounts and reports the amount to be repaid and the fund to be repaid.*
8 *Upon receipt of such certification, the director of accounts and reports*
9 *shall promptly transfer the amount certified to the specified fund.*

10 (h) *The fee for a multi-year flex account term permit shall be the*
11 *same as specified for other term permits in K.S.A. 82a-708c, and*
12 *amendments thereto.*

13 (i) *The chief engineer shall have full authority pursuant to K.S.A.*
14 *82a-706c, and amendments thereto, to require any additional measuring*
15 *devices and any additional reporting of water use for term permits issued*
16 *pursuant to this section. Failure to comply with any measuring or*
17 *reporting requirement may result in a penalty, up to and including the*
18 *revocation of the term permit and the suspension of the base water right*
19 *for the duration of the term permit period.*

20 (j) *The chief engineer shall submit a written report on the*
21 *implementation of this section to the house standing committee on*
22 *agriculture and natural resources and the senate standing committee on*
23 *natural resources on or before February 1 of each year.*

24 (k) *This section shall be a part of and supplemental to the Kansas*
25 *water appropriation act.}*

26 Sec. ~~4-5~~ 4. ~~K.S.A. 82a-764 is and K.S.A. 2022 Supp. 82a-736 are~~ is
27 hereby repealed.

28 Sec. ~~5-6~~ 5. This act shall take effect and be in force from and after
29 its publication in the Kansas register.